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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/030,367	01/02/2002	Takako Fujii	9643/OL340	8711
7278	7590	05/01/2006	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			DONNELLY, JEROME W	
			ART UNIT	PAPER NUMBER
			3764	

DATE MAILED: 05/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/030,367

Applicant(s)

FUJII ET AL.

Examiner

Jerome W. Donnelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/31/05
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 34-62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 34-62 is/are rejected. 34-62
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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Response to applicants Remarks

Applicants claims of a first and second “stretchable portions substantially covering” specific portions of a users leg are, still considered to be met by the same prior art applied 10/06/05.

Applicants amendments are considered to be directed to functional language and intended use, both of which are considered to be met by and capable of being achieved by the prior art of record.

In view of applicants remarks page 10, para. 1-3 the applicant is of the opinion that Fig. 5 of Fujimoto, discloses a stretchable portion 1 which extends onto the thigh over the top of the knee and upwardly from the knee to the groin area all the while extending along the musculus satorious. The applicant is however once again reminded that the applicants apparatus claim limitations must be patentably distinct absent the functional parameters or physical characteristic of an unknown wearer.

The apparatus specific size is unclaimed and the specific size and physical body characteristics of the wearers are unknown.

As to applicant pointing out that other patents refer to specific muscle groups of the human body in order to reference the location of positions of the claimed garment. The examiner responds as follows: The claims do not specifically point out that the patent was granted because of the location of specific claimed elements in the claims, the patent may have been granted because of certain other features.

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In response to applicant arguments directed to the applicability of Dicker the examiner notes that as broadly claimed the bands of Dicker cover either completely or partially the claimed area of applicant invention, if the stretchable areas cover the claimed muscle areas partially then the limitations are met. If the claimed areas, are covered completely the claim limitations are met.

Applicant is direct to fig. 1a of Dicker which disclose a band (36) which extend straight down and is capable of being position at a positioned on a medial side of a knee joint, if so desired. The examiner further note that a combination of the bands 36 and 38 would cover the claimed areas of the invention, as well.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34-37, 39-43, 45, 47-51 and 54-62 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujimoto.

The claims are rejected for the same reasons as set forth in the rejection of the same claims dated 10/06/05.

Claims 38, 44, 46, 52 and 53 are rejected under 35 U.S.C. 102(b) as being anticipated by Dicker et al.

The claims are rejected for the same reasons as set forth in the rejection of the same claims dated 10/06/05.

Applicant's arguments filed 12/30/05 have been fully considered but they are not persuasive. See above.

In response to applicant's argument that the invention cannot be used as claimed, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication should be directed to Jerome Donnelly at telephone number (571) 272-4975.

Jerome Donnelly